

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: **2022-054751**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

15/03/2022
DATE


SIGNATURE

VORNA VALLEY SHOPPING CENTRE CC
(REGISTRATION NUMBER: 1989/014240/23)

Applicant

and

FLAVA POT (PTY) LTD
(REGISTRATION NUMBER: 2019/505172/07)

First Respondent

NOORIE JOSEPH
(IDENTITY NUMBER: 800711 0085 088)

Second Respondent

IN RE:

VORNA VALLEY SHOPPING CENTRE CC
(REGISTRATION NUMBER: 1989/014240/23)

Plaintiff

and

FLAVA POT (PTY) LTD
(REGISTRATION NUMBER: 2019/505172/07)

First Defendant

NOORIE JOSEPH
(IDENTITY NUMBER: 800711 0085 088)

Second Defendant

JUDGMENT

- [1] On 28 February 2022, a written agreement of lease was concluded between the plaintiff as lessor and the first defendant as lessee in terms whereof the plaintiff let to the first defendant a shop situated at Vorna Valley Shopping Centre (“the premises”).
- [2] On 23 February 2022 the second defendant in writing bound herself personally as surety and co-principal for the punctual performance and in particular the due and punctual payment by the first defendant of all its obligations under and arising in terms of the lease agreement.
- [3] In terms of the agreement of lease, the first defendant was obliged to pay to the plaintiff rental, calculated in accordance with the lease, operating costs as defined and in the amounts set out in the lease, municipal rates and taxes, electricity, water, gas, refuse removal charges, sanitary fees, domestics and industrial effluent fees.¹
- [4] The first defendant took occupation of the leased premises and was accordingly obliged to pay to the plaintiff the aforementioned amounts.
- [5] It is not in dispute that the first defendant breached its obligations under the lease agreement and failed to pay to the plaintiff the amounts detailed in paragraph 15 of the plaintiff’s particulars of claim totalling R122 775,95. The amounts are detailed in both the aforementioned paragraph as well as an annexure annexed to the plaintiff’s particulars of claim marked annexure “POC3”.
- [6] On 7 September 2022, the plaintiff directed a demand to the first and second defendants to pay the aforementioned amount in 7 days failing which it would cancel the lease agreement. The first and/or second defendants failed to make payment of the aforesaid amount and on 27 October 2022, plaintiff, as it was entitled to, cancelled the aforesaid lease agreement by written notice to the first defendant affording it an opportunity until 28 November 2022 to vacate the leased premises.
- [7] The first defendant failed to vacate the leased premises on 28 November 2022 and continued, according to the plaintiff, to remain in unlawful occupation for a further 91

¹ The underlying *causa* and amounts payable by the first defendant under the lease have been set out in great detail in paragraph 15 of the particulars of claim and have not been effectively denied or challenged by the defendants.

days². In respect of the unlawful holding over, plaintiff claims an amount of R1 642,60 per day for the unlawful occupation from 1 December 2022 to the date first defendant vacates the premises. In the affidavit in support of the application for summary judgment, the amount claimed as part of Claim B or Claim 2 is computed in the amount of R116 624,60 and is the amount for unlawful holding over from 28 November 2022 to 7 February 2023.

- [8] The defendants in resisting summary judgment filed a plea, the essence of which is a bare denial of the material allegations pleaded by plaintiff. In addition, the defendants put forward a counterclaim in an amount of R1 249 978,69 but, which is unsubstantiated, does not disclose a cause of action, is laconic and bereft of any detail. It does not in my view, raise a cognisable defence which requires further adjudication.
- [9] There is in my view no defence set out either in relation to Claim A (Claim 1) or Claim B. Claim A it is my view clearly liquidated and the plaintiff is entitled to summary judgment against both the first and second defendants jointly and severally. However, in relation to Claim B, the amounts claimed are not liquidated and summary judgment is not appropriate³.
- [10] I should also mention that the application was properly enrolled for hearing for 4 March 2024. At the hearing, counsel for the plaintiff properly drew my attention to a notification received from the second defendant to the effect that she was unable to attend the hearing on 4 March 2024 as she had personal litigation in which she was involved. The matter then stood down to accommodate the second defendant until 7 March 2024 but once again, the same issue was raised. I declined any further postponement on the basis that the second defendant had been afforded an adequate opportunity to appear in court and more importantly on the basis that there was no *bona fide* defence disclosed in the pleadings and no purpose would be served in postponing the matter further.
- [11] In the circumstances, I make the following order:

- (1) Judgment is entered against the defendants jointly and severally for payment of:
- (2) The sum of R122 775,95;
- (3) Interest on the aforesaid amount at the prescribed mora rate from date of demand to date of final payment both dates inclusive;

² This is not challenged by the first or second defendant.

³ Hyprop Investments Limited and Another v NCS Carriers and Forwarding CC and Another 2013 (4) SA 607 (GSJ), paras 54, 60, 61, 103 and 105

- (4) Claim 2 is postponed *sine die*;
- (5) The first and second defendants are ordered to pay the costs of the application on the attorney and client scale;
- (6) Summary judgment in respect of Claim 2 is refused.

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D M FINE SC
ACTING JUDGE OF THE HIGH COURT